IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10094 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISARHUSSAIN YUSUFALI JAMANI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR KT DAVE, AGP, for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

1. District Magistrate, Bhavnagar, passed an order on November 26, 1999, in exercise of powers under Section 3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980, ("PBM

Act" for short), detaining the petitioner under the provisions of the PBM Act.

2. The petitioner came to be detained under the provisions of the PBM Act on account of the groundnut oil having been not found to be meeting the required standards of quality. The petitioner runs an oil mill and sells groundnut oil under brand name of 'Sunny'. The officers of the Civil Supplies Department collected sample of groundnut oil, got the sample examined by Forensic Science Laboratory and found that the quality of oil did not conform to the standards prescribed under the law. The detaining authority, ultimately, recorded a satisfaction that the petitioner was engaged in an activity which is detrimental to smooth supply of essential commodities and that he is doing so for his personal gain. He is, therefore, required to be detained under the provisions of the PBM Act in order to prevent him from pursuing his illegal activities.

3. The detenu/petitioner has challenged the order of detention by this petition under Article 226 of the Constitution on various counts. However, Mr. Thakkar, learned advocate appearing for the petitioner, has restricted his arguments to the aspect of delay in consideration of the representation by the Central Government. In support of his argument, he has placed reliance on affidavit in reply filed on behalf of the Central Government itself. He submitted that the representation was made on behalf of the detenu on 1.12.1999, which was received by the Central Government on 6.12.1999. Another representation was received by the Central Government through District Magistrate on 6.12.1999. On receiving the representation, the Central Government called for parawise remarks on both the representations by telegram on 7.12.1999. A reminder was sent by the Central Government on 13.12.1999 as parawise comments were not received from the State Government. The comments were received by the Central Government, admittedly, on 16.12.1999. However, the representation was rejected by competent authority of the Central Government on December 25, 1999. Mr. Thakkar submitted that an attempt is made to explain this delay by stating that 18th and 19th December, 1999 were closed Saturday and Sunday. Still no explanation is given for the period between 19th December and 25th December, 1999 and, therefore, this unexplained delay has affected the detenu's right of making an effective representation. The continued detention is, therefore, rendered illegal. The petition may, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader has opposed this petition on behalf of the detaining authority and the State Government. Ms. Davawala has opposed this petition on behalf of the Union of India.

5. Considering rival side contentions, the only question that needs to be addressed by this Court is whether there was delay in consideration of representation on behalf of the detenu made to the Central Government.

5.1 There is no dispute about a representation having been made on behalf of the detenu to the Central Government. The representation was dated December 1, 1999. The same was received on December 6, 1999 and the Central Government called for parawise remarks by telegram on December 7, 1999. As no remarks were received by the Central Government till 13th December, 1999, a telegram in reminder was sent and, pursuant thereof, the State Government forwarded the parawise comments, which were received by the Central Government Government on 16.12.1999. The representation came to be rejected by the Central Government on 25th December, 1999, i.e. after eight days. The affidavit in reply filed on behalf of the Central Government states that the representation was received on 16.12.1999. 18/12/1999 and 19/12/1999 were holidays, being Saturday and Sunday and, thereafter, the representation was considered in light of parawise remarks. Even if this explanation is accepted, there is no explanation coming forward from the Central Government for dates between 19th December and 25th December, 1999, i.e. for about five days. When the Central Government had parawise comments on the representation, it was expected of the Central Government to have acted expeditiously or to have explained as to how these five days were consumed in considering the representation and, in absence of any explanation from the Central Government in this regard, it can certainly be said that there is a delay in considering the representation made by the detenu, which has adversely affected the right of the detenu of making an effective representation. In this regard, decision in the case of Rajammal v. State of Tamil Nadu, AIR 1999 SC 684 can be referred to. In that case, there was a delay of five days in considering and disposing of the detenu's representation. It was stated that there is absence of the Minister concerned at the head quarter and the Apex Court said that it is not a sufficient ground to justify the delay. In the instant case, there is no explanation for this five clear days falling between 19th December

and 25th December, 1999 and, therefore, the detention would stand vitiated. The petition, therefore, requires to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated 26th November, 1999 is hereby quashed. The detenu-Nisarhussain Yusufali Jamani is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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